

**Pelican Management Inc. and Service Employees  
International Union, Local 32E, AFL-CIO.**  
Case AO-341

November 12, 1996

**ADVISORY OPINION**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on September 17, 1996, Pelican Management Inc. (the Employer) filed a Petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition alleges as follows:

1. A proceeding, Case SE-59117, filed by the Union pursuant to Section 705 of the New York State Labor Relations Act, seeking a Decision and Certification of Representative designating the Union as the exclusive representative of the building superintendent employed by the Employer at 1780 Grand Concourse, Bronx, New York, is currently pending before the New York State Employment Relations Board (State Board). The State Board held a hearing on July 11, 1996, and issued a Decision and Certification of the Union on July 30, 1996, based on the testimony of the building superintendent that he desires the Union to represent him. The Employer, however, did not receive notice of the July 11, 1996 hearing before the State Board.

2. The Employer is the managing agent for various residential apartment buildings and mixed residential commercial buildings located throughout the New York City boroughs including the property located at 1780 Grand Concourse, Bronx, New York.

3. During the past year, the Employer had gross revenues in excess of \$500,000 in rent from tenants of residential apartment buildings it managed, and purchased fuel oil, building materials, and other goods and materials valued in excess of \$50,000 directly from outside the State of New York.

4. The Employer is unaware whether the Union admits or denies the aforesaid commerce data, and the State Board has not made any findings with respect thereto.<sup>1</sup>

5. There are no representation or unfair labor practice proceedings involving the Employer pending before the Board.

All parties were served with a copy of the Petition for Advisory Opinion. On October 1, 1996, the Union filed a response in which it requested that the Board decline to assert jurisdiction inasmuch as the State

Board has already asserted jurisdiction and issued a Decision and Certification of Representative. The Union further contends that the Employer's claim that it was not served with notice of the hearing conducted by the State Board is without merit inasmuch as the State Board twice sent notice of the certification hearing.

On October 8, 1996, the Employer filed a reply contending, *inter alia*, that no evidence on the issue of whether the State Board or the NLRB would assert jurisdiction over the Employer was presented at the July 11 State Board hearing, that the Employer did not receive notice of the hearing, and that neither the Union nor the Employer has taken any action in reliance on the State Board's Decision and Certification of Representative. In addition, the Employer asserts that on October 7, 1996, the state administrative law judge reopened the record to introduce into evidence the jurisdictional information submitted to the NLRB, and that the administrative law judge expressly stated that he would recommend that the State Board refrain from taking any action based on this jurisdictional information, pending the NLRB's ruling on this Advisory Opinion.

Having duly considered the matter,<sup>2</sup> the Board is of the opinion that it would assert jurisdiction over the Employer. The Board has established a \$500,000 discretionary standard for asserting jurisdiction over residential buildings.<sup>3</sup> As the Employer alleges that the residential buildings generate in excess of \$500,000 per year in income, it is clear that the Employer satisfies the Board's discretionary standard, assuming the Employer is a single employer with respect to the buildings.<sup>4</sup> As the Employer further alleges that it annually purchases products valued in excess of \$50,000 directly from outside the State of New York, the Employer also clearly satisfies the Board's statutory standard for asserting jurisdiction.

Although the Board in past cases has declined to issue an advisory opinion in the face of a recently issued state certification,<sup>5</sup> here the Employer asserts that on October 7, 1996, the State Board administrative law judge reopened the record in the representation case

<sup>2</sup> The Board has delegated its authority in this proceeding to a three-member panel.

<sup>3</sup> See *Parkview Gardens*, 166 NLRB 697 (1967). Where, as here, the property owned and/or managed by the employer is diversified, the Board has historically analyzed one or the other portions of the employer's operation to determine whether it meets the relevant jurisdictional standard. If one or the other portions of the employer's operation meets the relevant standard, as the residential portion does here, the Board will assert jurisdiction over the entire operation. See *Carol Management Corp.*, 133 NLRB 1126 (1961), and cases cited there.

<sup>4</sup> See *Mandel Management Co.*, 229 NLRB 1121 (1977).

<sup>5</sup> See *2229 Associates*, 307 NLRB 1289 (1992); and *SHA Realty*, 299 NLRB 332 (1990), and cases cited there. See also *Box Tree Restaurant*, 235 NLRB 926 (1978).

<sup>1</sup> The State Board's Decision and Certification of Representative, a copy of which is attached to the Employer's Petition for Advisory Opinion, does not include any findings with respect to the commerce data.

for the purpose of introducing into evidence the jurisdictional information submitted to the NLRB in this proceeding and that the administrative law judge expressly stated that he would recommend that the State Board refrain from taking any action based on this jurisdictional information, pending the NLRB's ruling on the Petition for Advisory Opinion. The Union has not disputed the Employer's assertion that the administrative law judge has reopened the hearing on the jurisdictional issue. Under these circumstances, we find

that the prior cases are distinguishable and that it is appropriate to issue the requested Advisory Opinion.

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the Employer.<sup>6</sup>

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<sup>6</sup>The Board's advisory opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of any petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.